



Milwaukee Police Department
Police Administration Building
749 West State Street
Milwaukee, Wisconsin 53233
<http://www.milwaukee.gov/police>

Alfonso Morales
Chief of Police

(414) 933-4444

November 4, 2019

MuckRock News
DEPT MR 79556
411A Highland Ave
Somerville, MA 02144-2516

Dear Emma Best:

This letter is in response to your August 26, 2019, public records request to the Milwaukee Police Department ("MPD"), in which you requested:

"Copies of any emails, letters, memos or other records of consultations regarding public records requests (FOI/FOIL/FOIA etc.) with either the Department of Justice, including the Federal Bureau of Investigation and Drug Enforcement Agency components."

The public policy in this state is to give the public the greatest amount of access to government records as possible. Wis. Stat. § 19.31. The general presumption is that government records are open to the public unless there is a clear statutory or common law exception. If there is no clear statutory or common law exception the custodian must "decide whether the strong presumption favoring access and disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure." *Hempel v. City of Baraboo*, 2005 WI 120, § 28. Notwithstanding the presumption of openness, the public's right to access to public records is not absolute. *Journal/Sentinel v. Aagerup*, 145 Wis. 2d 818, 822 (Ct. App. 1988).

After reviewing your request, I have determined that your request is insufficient.

A request under the public records law is sufficient if it reasonably describes the requested record or information being requested. A request is insufficient if it is without a reasonable limitation as to the subject matter or the length of time represented by the record. Wis. Stat. § 19.35(1)(h). An insufficient request can be denied when responding represents a burden far beyond that which may reasonably be required of a custodian of a public record. *Schopper v. Gehling*, 210 Wis. 2d 208, 210 (Ct. App. 1997). The purpose of the limitation found under Wis. Stat. § 19.35(1)(h) is to "prevent a situation where a request unreasonably burdens a record custodian, requiring the custodian to spend excessive amounts of time and resources deciphering and responding to a request." *State ex rel. Gehl v. Connors*, 2007 WI App 238, ¶ 17. A request should include sufficient specificity so the custodian does not have to guess at what a requester is seeking. *Seifert v. School Dist. of Sheboygan Falls*, 2007 WI App 207, ¶ 42, 305 Wis. 2d 582, 740 N.W. 2d 177. Compliance with the Public Records Law should not "so burden the records custodian that the normal functioning of the office would be severely impaired." *Schopper*, 210 Wis. 2d at 213.

In this instance, you have requested communications sent between the Department of Justice ("DOJ"), Federal Bureau of Investigation ("FBI") and Drug Enforcement Agency ("DEA") "regarding public record requests (FOI/FOIL/FOIA etc.)," without any length of time identified or without any kind of subject matter other than the communications involve record requests. Having to go back through all of the MPD's interactions with the Federal and State DOJ's, the FBI and the DEA since MPD's inception to look for communications about public records represents a massive undertaking, and would significantly impair the Public Records Division ability to respond to other outstanding public records requests. As the Public Records Division receives over 2,000 public records requests a month, this would create an enormous logjam and would not be fair to other record requesters. For this reason, your request is being denied as insufficient under Wis. Stat. § 19.35(1)(h), and because it is vague, overly broad and unduly burdensome.

Please note that to the extent that you are looking for records related to FOIA, it is unlikely that MPD has any records that are responsive to your request. The records created or kept by MPD are subject to Wisconsin's Public Records

Law, not FOIA. The state DOJ has an Office of Open Government that provides advice to requesters and authorities regarding the application of Wisconsin's Public Records Law. However, communications from the Office of Open Government are typically directed to MPD's legal counsel, not MPD itself.

This determination is subject to review by *mandamus* action under Wis. Stat. § 19.37(1), or upon an application to the Wisconsin Attorney General or the Milwaukee County Corporation Counsel.

Sincerely,

ALFONSO MORALES
CHIEF OF POLICE



KERRY NAMIN
POLICE SERGEANT

AM: KN: rc
J16231 Response Letter

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SEP 4 4:10

August 26, 2019

To Whom It May Concern:

Pursuant to the Wisconsin Open Records Act, I hereby request the following records:

Copies of any emails, letters, memos or other records of consultations regarding public records requests (FOI/FOIL/FOIA etc.) with either the Department of Justice, including the Federal Bureau of Investigation and Drug Enforcement Agency components.

I am a member of the news media and request classification as such. I have previously written about the government and its activities, with some reaching over 100,000 readers in outlets such as Gizmodo, MuckRock, Motherboard, Property of the People, Unicorn Riot, and The Outline, among others. As such, as I have a reasonable expectation of publication and my editorial and writing skills are well established. In addition, I discuss and comment on the files online and make them available through non-profits such as the library Internet Archive and the journalist non-profit MuckRock, disseminating them to a large audience. While my research is not limited to this, a great deal of it, including this, focuses on the activities and attitudes of the government itself. As such, it is not necessary for me to demonstrate the relevance of this particular subject in advance.

As my primary purpose is to inform about government activities by reporting on it and making the raw data available, I request that fees be waived.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days.

Sincerely,

Emma Best

J116231